

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD P., by and for R.P.,
and DENISE L., by and for K.L.,
Plaintiffs

v.

SCHOOL DISTRICT OF THE CITY OF
ERIE, PENNSYLVANIA, et al.,
Defendants

CIVIL ACTION NO. 03-390 ERIE

JURY TRIAL - DAY NO. 5
(DEFENDANTS' CLOSING ARGUMENT)

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Courtroom C, U.S. Courthouse, Erie,
Pennsylvania, on Monday, January 30, 2006.

APPEARANCES:

EDWARD A. OLDS, Esquire, and CAROLYN
SPICER RUSS, Esquire, appearing on behalf of
the Plaintiffs.

JAMES T. WARMEN, Esquire, appearing on behalf of
the Defendants.

Ronald J. Bench, RMR - Official Court Reporter

P R O C E E D I N G S

(Whereupon, the following Excerpt of Jury Trial

proceedings began at 9:42 a.m., on Monday, January 30, 2006,

in Courtroom C.)

THE COURT: Good morning, members of the jury. All

right, Mr. Marnen, are you ready to go?

MR. MARNEN: Yes, sir. May it please the court,

Mr. Olds, ladies and gentlemen of the jury.

Rachel and Kristina were victims of despicable acts

of brutality. That these kids were mentally retarded, that is

the assailants, does not excuse what happened. Their

childhoods were in effect stolen from them and replaced with

pain and anguish. Their parents and they have a right to be

angry. In fact, angry does not adequately describe the way

they have a right to feel about what happened on December 19,

2001.

But that does not justify what they are trying to do

in this courtroom. And that is smear the reputation and

character of two good people, two good professional educators,

who are trying to do the right thing.

There was no deliberate indifference here to

anything. Janet Woods and Linda Capabianca, when they became

aware of what was happening, reacted immediately to it.

1 As soon as they found out what happened, they immediately
 2 questioned every one of these kids. They questioned the
 3 witnesses, they got the parents in there, and they turned it
 4 over to the police. And they told the police everything as to
 5 what happened. And the police prosecuted these kids and put
 6 them away. And Janet and Linda made sure that the victims,
 7 Rachel and Kristina, were taken out of the place where the
 8 harassment happened and away from where the rape itself
 9 happened, it happened across the street. This is not
 10 deliberate indifference.
 11 I want to remind you of the time line here. The
 12 rapes happened on December 19, 2001, in the evening after
 13 school between 6:30 and 7 o'clock. That's three days before
 14 Christmas vacation. It was a Wednesday. December 20th and
 15 21st, are the last two days before the kids went off for
 16 Christmas. They came back on January 2, 2002, that was a
 17 Wednesday. And, by the way, Rachel was not in school on the
 18 20th and the 21st. They came back the 2nd, on Wednesday. The
 19 2nd, 3rd and 4th they were in school, the 4th is a Friday.
 20 Kristina that evening hurt herself after her sister
 21 told her mother about the harassment she was hearing about.
 22 Then Kristina reacted by injuring herself, she was taken to the
 23 hospital, and she remained there at Millcreek Community
 24 Hospital for a week, never to return to Strong Vincent.
 25 Rachel, on the other hand, was back at school on

Monday, January 7th. January 9th she had her outburst in Ms. Scully's class in the morning. She was sent to see Ms. Cappabianca, who questioned her to find out what happened immediately, took her to see Janet Woods, you know what happened from there on out.

Charles left school the day he was confronted with this in Janet Woods' office, January 10th. His parents reacted to this by taking him out of school and putting him in first Assembly Christian School. He never returned to Strong Vincent.

Anthony on January 23rd was arrested by the police, taken to an institution. He never returned to Strong Vincent. And Becky was arrested on January 29th, same thing happened, never returned to Strong Vincent.

The obvious fact that we did not have here deliberate indifference, is met with baseless accusations and testimony that is so absurd it would be comical if it weren't so nasty and vicious.

The plaintiffs would like you to believe that Kristina on December 20th approached Linda Cappabianca and told her last night, Ms. Cappabianca, I was raped, or words to that effect. And Linda Cappabianca responded by saying you shouldn't do that, that's what people who are in love do, who are older. That's patently ridiculous.

They ask you to believe Charles, who testified that

1 before Christmas Linda Cappabianca approached him and asked him
 2 that she had heard or told him she had heard he had oral sex,
 3 she wanted to know about it. Charles did say that.
 4 Charles also said on two occasions during his
 5 testimony that Ms. Cappabianca before Christmas vacation simply
 6 asked him what was going on, which is what she testified to.
 7 He also testified that Janet Woods and Detective
 8 Love accused him of rape before Christmas, that clearly didn't
 9 happen, it happened after Christmas.
 10 He also testified that his mother found out about
 11 the rape before Christmas, that clearly didn't happen before
 12 Christmas.
 13 And then he testified on one occasion his mother was
 14 with him when he met with Janet Woods and Detective Love. And
 15 on another occasion he testified his father was there. But
 16 Charles is confused at a minimum.
 17 Now, if you don't believe Kristina and Charles, the
 18 plaintiffs would like you to take a look at what Linda
 19 Cappabianca and Janet Woods testified to. And they contend
 20 based on that, they still had enough information on December
 21 20th to make them deliberately indifferent to known acts of
 22 harassment, by not commencing some sort of investigation at
 23 that point. Let me remind you my recollection of what happened
 24 here.
 25 Linda Cappabianca said she heard him talk during

1 the day on December 20th. Something like some unidentified
2 student saying hey, did you hear what happened last night with
3 Kristina and Charles. Plaintiffs would like you to believe
4 based on that, you are to automatically think that she was
5 raped the night before, she was sexually assaulted in some way
6 or that she committed some act like oral sex, a 12-year-old.
7 Linda said that's the last thing I thought about.
8 She's 12-years-old, I was thinking maybe hand-holding or
9 kissing, at most. And that's too much for a 12-year-old girl,
10 I was concerned about it. And so I approached Kristina.
11 Kristina didn't come to her, nobody says that except I guess
12 Kristina. She approached her, she asked what's going on with
13 you and Charles, I heard something is going on with you and
14 Charles and she said yes. And that's when she said don't do
15 that, that's what older people do who are in love.
16 Kristina was not upset, there was nothing out of the
17 ordinary to lead Linda Cappabianca to think that something
18 might be going on here that was serious. She went and talked
19 to Charles, and Charles denied it. That doesn't mean she
20 believed Charles. The sneak, as he's been characterized.
21 At the end of the day she has a conversation with
22 Janet Woods, as she does every day, and talks about a bunch of
23 things. And one of things they talk about is this thing and
24 they agree they're going to keep their ear to the ground.
25 That's not deliberate indifference. That's reacting reasonably

1 to known information.

2 Then, of course, we have testimony by Kristina that

3 she told Linda Cappabianca several times thereafter that she

4 was being harassed. And Rachel testified that she tried to

5 tell Ms. Cappabianca about the rapes and harassment almost

6 everyday and she refused to speak with her. And at one point

7 she even said I know what happened.

8 What motive does she have to act like that, why

9 would she act like that. On January 9th when this outburst

10 occurred, she reacted immediately, she questioned the girl and

11 she found out what happened, and she treated the matter as a

12 serious matter and dealt with it appropriately. Why in the

13 world before January 9th, during the seven prior days --

14 January 9th, by the way, was the eighth day after the rapes

15 occurred, eighth school day, why in the world in the prior

16 seven days would she rebut her.

17 And if she was really doing that, why didn't she

18 talk to somebody else. There were 10 or 15 people at a minimum

19 in that building that she could have talked to. She could have

20 talked to Chris Ruhl, the mental health specialist. She could

21 have talked to the school nurse. She could have talked to

22 Vicky Scully, the teacher. She could have talked to Janet

23 Woods, who even Rachel admitted, constantly went around saying

24 if you need help, let me know. Nobody can bother you, that's

25 not allowed around here. But no, she didn't talk to anybody

1 else.
2 Rachel Polancy and Kristina Long weren't talking to
3 anybody, including their parents, about what happened. It only
4 came out because of the outburst -- the outburst that Rachel
5 had in Vicky Scully's class.
6 Then we have what amounts to be piling on, in my
7 view. We have allegedly before, a couple days before the
8 January 9th outburst, we have Ms. Cappabianca calling up Mr.
9 Polancy in the middle of the day and telling him to come in and
10 see her immediately. Telling him on the telephone and in
11 person that Rachel is filthy and has a filthy mouth.
12 And Mr. Polancy says on January 10, 2002, he meets
13 with Janet Woods and Chris Ruhl, the mental health specialist,
14 and Rachel. The purpose of the meeting is to inform this man
15 that his daughter has been raped. Inform this man in the
16 presence of a mental health specialist about a very sensitive,
17 delicate topic. And Mr. Polancy would have you believe that
18 under these circumstances Janet Woods opened up the meeting by
19 saying you aren't going to believe this, Rachel has been -- and
20 I'm not going to repeat it, you heard it, using foul,
21 disgusting, vulgar language, in front of his 13-year-old
22 daughter.
23 They'll have you believe that he was the person that
24 raised going to the police and Ms. Woods said to shut your
25 mouth, some coverup going on here. Is that consistent at all

1 with the facts as we know them.

2 And speaking of piling on, then we have the

3 testimony of Robin Johnson and Toni Northrup. January 10,

4 2002, in the middle of their investigation of this rape, where

5 they're spending all their time in the administration office

6 interviewing kids, getting their parents in, Linda Cappabianca

7 takes time out from this effort to call up Robin Johnson, the

8 mother of a student who was not involved at all, was not a

9 witness, was not there, who isn't even a very good friend of

10 Rachel's, Rachel said that, calls her out of the blue and says

11 come in, I want to talk to you, and she's brings her

12 12-year-old daughter down. She tells her in very vulgar

13 language that she should keep her child away from Rachel

14 because Rachel is promiscuous. And talks about the kind of

15 acts that Rachel was forced to perform on December 19, 2001,

16 and indicates they're voluntary.

17 Despite the fact the day before Rachel has told her

18 she has been raped, despite the fact that they've been talking

19 to all these kids about this, they're in the second day of

20 their investigation, despite all that, she tells her and she

21 tells her in disgusting language in front of her 12-year-old

22 daughter. And she's the only person, the only parent who is

23 brought in to have this conversation. I don't know what's

24 going on, but that's ridiculous and it's outrageous.

25 And then Mr. Polancy says that during that January

10th conversation Janet Woods admitted to him that she had known about this since December of 2001 and did nothing about it.

And you heard the cross-examination of Linda Cappabianca and Janet Woods. Where words were picked out of police reports and words were picked out of that January 10, 2002 memo, and there was an effort to make them admit that they were raped, they believed they had done this consensually. Read those reports yourself. It's clear what they say. That the rape is being reported to the police. That the police were told not only about the December 19, 2001 rape, but they were told about the January 7, 2002 stairwell incident. They were told about the January 7, 2002 assault over at the laundromat. They were told everything, nothing was withheld. And they gave all this information to the police and the police determined what the charges would be.

There were no charges on the January 7th instance. That decision wasn't made by Janet Woods and Linda Cappabianca and the Erie School District, it was made by the police. And whatever bargains were made in the course of the criminal proceedings against these animals that did this, were made by the DA's Office, not by the Erie School District and Janet Woods or Linda Cappabianca.

And then we have this psychologist who comes in here

1 from Pittsburgh, and he says that everybody that tried to help

2 these girls did it wrong, made them worse. The Erie School

3 District, Sarah Reed, Millcreek Community Hospital, every

4 mental health specialist who gave these kids counseling, tried

5 to help them, they all did it wrong and made it worse. And he

6 doesn't see them until the middle of 2005, and then he doesn't

7 even recommend treatment. He doesn't provide any treatment.

8 The first time he recommends treatment is in this courtroom for

9 \$175 an hour.

10 Janet Woods and Linda Cappabianca took their jobs

11 seriously and they cared about these kids. Everything they did

12 was with the welfare of Kristina and Rachel in mind. They were

13 not deliberately indifferent to harassment or anything else.

14 They did nothing wrong.

15 The only wrongful conduct you have been exposed to

16 in this case is by the plaintiffs and their witnesses parading

17 this preposterous story in front of you. Please put a stop to

18 it and enter a verdict for Erie School District and Linda

19 Cappabianca. Thank you.

22 (Whereupon, the defendants' closing argument was

23 concluded.)

C E R T I F I C A T E

I, Ronald J. bench, certify that the foregoing is a
correct transcript from the record of proceedings in the
above-entitled matter.

Ronald J. Bench

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